

### **REMARKS**

Claims 1-10 are pending in the present application.

Claims 11 and 12 are cancelled.

No new matter is entered as a result of the amendments.

#### Election/Restriction

The election restriction is acknowledged. Claims 3, 4, 9 and 10 are withdrawn pending allowance of a generic or linking claim. Claims 1 and 2 are, at least, linking claims which are now believed to be in condition for allowance. Applicant respectfully request examination of claims 3, 4, 9 and 10.

#### Oath/Declaration

The Oath/Declaration is state to be defective for failing to provide a mailing address. Applicant respectfully submits that the mailing address of Kunhsweg 12, 2303 Hamburg, Germany is provided in the signed declaration. The Oath/Declaration is believed to be a correct and to have a proper mailing address.

### Specification

The specification is objected to due to numerous informalities. The objection is rendered moot by amendment.

### Claim Rejections - 35 USC § 112

Claims 1, 2, 5-8, 11 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to point out and distinctly claim the subject matter which applicant regards as the invention.

Applicants respectfully disagree. The Office clearly identifies the separate terms "sample fluid", "fluid" and "reaction fluid" and admits that the terms are used consistently as indicated by the fact that they are properly used in "all occurrences". One of skill in the art would have no problem following the logic of the claim and would not be deterred in the least to immediately understand the three different components. In an effort to advance the application without further delay claims 1, 2 and 3 have been amended to recite "sample", "fluid" and "reaction mixture". There is no new matter and no change in claim scope entered by Applicant honoring the request of the Office. In claim 3 the term

"sample" has now been changed to "sample component" since the change requested by the Office would otherwise add confusion in claim 3.

Claim 1 is cited as being vague due to the apparent difference between the preamble, wherein quantities of particles is recited, and the last clause wherein precipitates are measured. The preamble has been changed to recite antigen-antibody concentration. As set forth in the specification the light scattering technique measures components of size and concentration.

Claim 1 is rejected as being vague due to a perceived gap between the necessary structural components. Applicant respectfully disagrees. The components are related as reactants and products formed by the reaction of reactants.

Claim 1 is rejected due to the presence of the term "essentially". This term has been removed by amendment.

Claim 1 is rejected due to improper antecedent basis for "the measuring cell". This rejection has been rendered moot by amendment.

Claims 2 and 5-8 are rejected due to improper antecedence in the preamble. This rejection has been rendered moot by amendment.

Claims 5-8 are rejected as having improper multiple dependency. This rejection is rendered moot by amendment.

Claim 5 is rejected as being indefinite for reciting "at least . . . one polyclonal antibody". Claim 5 has been amended thereby rendering the rejection moot.

Claim 11 is rejected for improper antecedence. The rejection is rendered moot by amendment.

Claim 12 is rejected for improper antecedence and for being vague. The rejection is rendered moot by amendment.

#### Claim Rejections - 35 USC § 112

Claims 1, 2 and 5-8 are rejected under 35 U.S.C. 112, first paragraph. The rejection was amended for clarity in a supplemental action mailed November 17, 2008.

The Office contends that there is insufficient enablement for the claimed method in which there is 1) a large excess of antibody or 2) a large excess of antigen. Applicant respectfully disagrees.

It is a common occurrence in analytical analysis that the amount of a species being analytically measured is well outside of the calibration range of the equipment and/or procedure. One of skill in the art typically takes an initial measurement. If the measurement is more concentrated than the quantitative range of the analytical procedure a sample is prepared with a known dilution and then measured. This process continues until the sample has a concentration which is within the calibration limits of the procedure or equipment. Such a process is standard procedure even in secondary school chemistry laboratories and would be well understood to one of even minimal skill in the art. To presume otherwise assumes that the tester has a predetermined knowledge of the sample. Such a predetermined knowledge frequently does not exist.

The rejection of claims 1, 2 and 5-8 under 35 U.S.C. 112, first paragraph, is improperly based on a failure of the Office to recognize that which is well known in the art even at the preliminary stages of laboratory training.

Claim Rejections - 35 USC § 102

Claim 11 is rejected under 35 U.S.C. 102(b) as being anticipated Miyazi et al. (US Patent 5,534,441).

Claim 11 is cancelled thereby rendering the rejection moot.

Claim Rejections - 35 USC § 103

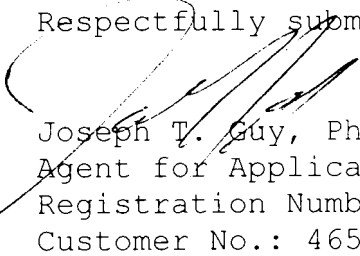
Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable Miyazaki et al. (US Patent 5,534,441) in view of Foster et al. (US Patent 4,444,879).

Claim 12 is cancelled thereby rendering the rejection moot.

## CONCLUSIONS

Claims 1-10 are pending in the present application. All claims are believed to be in condition for allowance. Notice thereof is respectfully requested.

Respectfully submitted,

  
Joseph T. Guy, Ph.D.  
Agent for Applicants  
Registration Number 35,172  
Customer No.: 46591

December 8, 2008